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17  
18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **OAKLAND DIVISION**

21 Charles Baird et al.,

22 Plaintiffs,

23 v.

24 BlackRock Institutional Trust Company,  
25 N.A., et al.,

26 Defendants.

Case No: 4:17-cv-01892-HSG

**STIPULATION AND ~~PROPOSED~~ ORDER  
TO MODIFY THE CASE SCHEDULE**

27 Pursuant to Northern District of California Local Rule 6-2, Plaintiffs Charles Baird and  
28 Lauren Slayton (collectively, "Plaintiffs"), Defendant Mercer Investment Consulting ("Mercer"),  
and Defendants BlackRock Institutional Trust Company, N.A., Blackrock, Inc., the BlackRock, Inc.  
Retirement Committee, the Investment Committee of the Retirement Committee, the Administrative  
Committee of the Retirement Committee, the Management Development & Compensation  
Committee, Anne Ackerley, Catherine Bolz, Chip Castille, Marc Comerchero, Paige Dickow, Daniel  
A. Dunay, Any Engel, Nancy Everett, Joseph Feliciani, Jr., Michael Fredericks, Corin Frost, Daniel

1 Gamba, Kevin Holt, Chris Jones, Milan Lint, Philippe Matsumoto, Katherine Nedl, John Perlowski,  
2 Ann Marie Petach, Andy Phillips, Kurt Schansinger, Tom Skrobe, Jeffrey A. Smith, Joel Davies,  
3 John Davis, and Laraine McKinnon (“collectively, “BlackRock”), by and through respective  
4 counsel, hereby stipulate and agree as follows:

5 **The Current Case Schedule**

6 WHEREAS, on June 18, 2018, the Court entered a stipulated order modifying the case  
7 schedule by setting, among other dates, the close of fact discovery on September 21, 2018; the close  
8 of expert discovery on class certification issues on December 21, 2018; and the completion of  
9 briefing on the plaintiffs’ motion for class certification on March 14, 2019, ECF No. 122;

10 WHEREAS, on August 27, 2018, with leave of Court, Plaintiffs filed a Second Amended  
11 Class Action Complaint, naming additional defendants, including Mercer, ECF No. 154;

12 WHEREAS, on September 17, 2018, Plaintiffs, Mercer, and BlackRock (collectively, the  
13 “Parties”) filed a stipulation seeking to modify the case schedule, ECF No. 161;

14 WHEREAS, after holding a telephonic conference on September 25, 2018, the Court granted  
15 in part the Parties’ proposed modifications to the case schedule, setting, among other dates, the close  
16 of fact discovery on December 21, 2018; the close of expert discovery on class certification issues  
17 on February 28, 2019; and the completion of briefing on Plaintiffs’ class certification motion on May  
18 14, 2019, ECF No. 173;

19 WHEREAS, on December 10, 2018, the Court granted the Parties’ Stipulation to Modify the  
20 Case Schedule, setting, among other dates, the close of fact discovery on February 4, 2019; the close  
21 of expert discovery on class certification issues on April 16, 2019; the completion of briefing on  
22 Plaintiffs’ class certification motion on June 28, 2019; and the hearing on Plaintiffs’ class  
23 certification motion on July 25, 2019, ECF No. 204;

24 WHEREAS, on January 31, 2019, the Court granted the Parties’ further Stipulation to  
25 Modify the Case Schedule, in which the Parties proposed a roughly two-week extension of most case  
26 deadlines to allow them to resolve certain disputes without motion practice and to reschedule certain  
27 remaining depositions, ECF No. 237;

1 WHEREAS, the Court set, among other deadlines, the close of fact discovery on February  
2 19, 2019; the close of expert discovery on class certification issues on April 30, 2019; the  
3 completion of briefing on Plaintiffs' class certification motion on July 11, 2019; and the hearing on  
4 Plaintiffs' class certification motion on August 1, 2019, *id.*;

5 **Corporate Representative Depositions**

6 WHEREAS, BlackRock has agreed to provide 90 minutes of corporate testimony on two  
7 topics—topics (v) and (w)—identified in Plaintiffs' Rule 30(b)(6) deposition notice to BlackRock  
8 Inc., Russell Decl. ¶ 3<sup>1</sup>;

9 WHEREAS, on January 30, 2019 (after the Parties filed the prior stipulated case schedule),  
10 Magistrate Judge Westmore authorized an additional two hours of additional corporate testimony on  
11 three other topics—topics (n), (p), and (r)—identified in Plaintiffs' Rule 30(b)(6) deposition notice,  
12 *see* ECF No. 325;

13 WHEREAS, BlackRock's corporate representative on topics (n), (p), and (r) is available for  
14 deposition on February 27, 2019, and BlackRock's corporate representative on topics (v) and (w) is  
15 available for deposition on March 6, 2019, Russell Decl. ¶ 4;

16 WHEREAS, Mercer recently was forced to reschedule its Rule 30(b)(6) deposition that had  
17 been scheduled for February 14, 2019, as a result of inclement weather affecting both New York  
18 City and the greater northeast area that resulted in flight cancellations and prevented Mercer's  
19 outside counsel who would be defending the deposition from traveling to New York from Tuesday,  
20 February 12 through the date of the deposition, Thursday, February 14, 2019, *id.* ¶ 5;

21 WHEREAS, as a result of the aforementioned scheduling difficulties, Mercer and Plaintiffs  
22 conferred and have agreed to reschedule Mercer's Rule 30(b)(6) deposition for February 28, 2019,  
23 while another Mercer witness remains scheduled for a Rule 30(b)(1) individual deposition on  
24 February 21, 2019, *id.* ¶ 6;

25 WHEREAS, while the Parties are able to accommodate these Rule 30(b)(6) depositions on  
26 February 27, February 28, and March 6, to do so would require a modest adjustment to the case

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27 <sup>1</sup> A declaration from Matthew A. Russell setting forth the reasons for the Parties' request is attached  
28 hereto as Exhibit A.

1 management schedule because BlackRock's and Mercer's corporate testimony should be completed  
2 with sufficient time for expert review of any evidence that may be relevant to the opinions they  
3 would express in the class certification expert reports, due on March 15, 2019 under the current  
4 schedule, *id.* ¶ 7;

5 WHEREAS, due to the unforeseen events set forth above, the available dates for  
6 BlackRock's and Mercer's corporate testimony are up to two weeks after the current close of fact  
7 discovery on February 19, which would not provide sufficient time for expert review of any  
8 evidence that may be relevant to the opinions they would express in the class certification expert  
9 reports currently due on March 15, *id.*;

10 **The Parties' Continued Discovery Efforts**

11 WHEREAS, Plaintiffs and BlackRock continue to meet and confer about certain outstanding  
12 discovery disputes and expect to file additional joint discovery letters with Magistrate Judge  
13 Westmore during the week of February 18, Russell Decl. ¶ 8;

14 WHEREAS, Plaintiffs and Mercer had not engaged in any substantive discovery at the time  
15 Mercer was added as a party in late August 2018, but have since worked diligently in their respective  
16 discovery efforts, *id.* ¶ 9;

17 WHEREAS, Plaintiffs have issued, and Mercer has responded to, 11 requests for the  
18 production of documents; 16 interrogatories; and 41 requests for admission, *id.* ¶ 10;

19 WHEREAS, Mercer also has collected a significant amount of data and documents from  
20 several Mercer custodians; has reviewed those materials to respond to Plaintiffs' document requests;  
21 has already made two productions totaling almost 60,000 pages of documents; and will be making at  
22 least one further production of documents in the near future, *id.* ¶ 11;

23 WHEREAS, Plaintiffs and Mercer have held several additional meet-and-confers concerning  
24 the parameters of Mercer's production, such as search terms, custodians, and the applicable date  
25 ranges, as well as the scope of Plaintiffs' document requests, and Plaintiffs and Mercer have been  
26 negotiating in good faith and believe they have now reached final compromises with respect to the  
27 outstanding issues between them, but they require additional time to implement those compromises  
28

1 by producing certain documents and/or responses to amended written discovery, *id.* ¶ 12;

2 WHEREAS, on January 22, 2019, Plaintiffs sought to meet and confer concerning Mercer's  
3 objections and responses to certain of Plaintiffs' Requests for Admission and Interrogatories; Mercer  
4 and Plaintiffs met and conferred about this issue and others on February 5 and February 7, 2019;  
5 Plaintiffs agreed to serve amended versions of the written discovery in question, which they did on  
6 February 7, 2019; Mercer agreed consider and respond to Plaintiffs' amended written discovery on  
7 an expedited basis, if possible, by February 21, 2019, and Mercer currently is in the process of doing  
8 so; and absent the modest extension proposed by this Stipulation, Plaintiffs may be compelled to  
9 engage in motion practice before this Court to preserve their positions, when such disputes could be  
10 avoided by Mercer's forthcoming written responses and/or if the Parties had additional time to  
11 resolve them, *id.* ¶ 13;

12 WHEREAS, Mercer and Plaintiffs believe the parties and the Court would benefit from  
13 (1) avoiding potentially unnecessary discovery disputes before this Court, when they believe in good  
14 faith that they may resolve these issues if given the benefit of more time, and/or (2) allowing the  
15 depositions of Mercer witnesses to occur after documents are fully produced to avoid the risk that  
16 Mercer would be forced to present those witnesses for a second day of deposition, *id.* ¶ 14;

17 WHEREAS, Mercer and Plaintiffs are cognizant of the fact that they have sought multiple  
18 modifications of the case schedule, are appreciative of the Court's scheduling flexibility, and at this  
19 time intend for the current proposed extension to be the final one they seek; and Mercer and  
20 Plaintiffs further believe the incremental and modest length of each requested extension arises from,  
21 and reflects, the fact that they have continued to work together in good faith to resolve discovery-  
22 related disputes without motion practice, combined with two unfortunate, unforeseen scheduling  
23 issues with respect to Mercer's depositions, rather than suggesting any attempt or effort to unduly  
24 delay these proceedings, *id.* ¶ 15; and

25 WHEREAS, the Parties propose a modest extension of the existing case schedule by  
26 approximately fourteen days, including modifications outlined below, *id.* ¶ 16.

27 **IT IS HEREBY STIPULATED AND AGREED**, subject to the approval of the Court that:  
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1           1.       The Parties agree there is good cause for a modest extension of the existing case  
2 schedule by approximately fourteen (14) days, and an extension of the hearing on the motion for  
3 class certification by seven (7) days, to allow all Parties sufficient time to complete fact discovery  
4 and proceed with expert discovery related to class certification. Russell Decl. ¶ 16.

5           2.       The Parties further agree that, should the Court grant an extension on the case  
6 schedule, they will not issue any further written discovery requests on one another (excepting  
7 additional discovery between Plaintiffs and BlackRock that may be granted by the Court in the  
8 resolution of currently-pending or forthcoming discovery disputes).

9           3.       Plaintiffs will not seek to depose any current or former Blackrock or Mercer  
10 employee, other than those depositions the Parties have already noticed and/or scheduled (and  
11 excepting additional depositions of BlackRock witnesses that may be ordered by the Court in the  
12 resolution of currently-pending or forthcoming discovery disputes), prior to the class certification  
13 hearing. No party will seek to depose any members of either putative class prior to the class  
14 certification hearing.

15           The Parties therefore stipulate and agree on the following case schedule:

16

| Event   | Existing Deadline      | Stipulated Deadline    |
|---|------------------------|------------------------|
| Close of Fact Discovery                         | February 19, 2019      | March 6, 2019          |
| Opening expert reports on class cert. issues    | March 15, 2019         | March 27, 2019         |
| Rebuttal expert reports on class cert. issues   | April 16, 2019         | April 24, 2019         |
| Close of expert discovery on class cert. issues | April 30, 2019         | May 8, 2019            |
| Motion for class certification                  | May 21, 2019           | June 3, 2019           |
| Opposition to class certification motion        | June 20, 2019          | July 3, 2019           |
| Reply in support of class certification motion  | July 11, 2019          | July 25, 2019          |
| Class Certification Hearing                     | Aug. 1, 2019 at 2 p.m. | Aug. 8, 2019 at 2 p.m. |

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1 Dated: February 15, 2019

2 **COHEN MILSTEIN SELLERS & TOLL,**  
3 **PLLC**

4 /s/ Mary J. Bortscheller

Michelle C. Yau

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/s/ Matthew A. Russell

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*Attorneys for Mercer Investment Consulting*

1 **ATTESTATION**

2 I attest that for all conformed signatures indicated by an “/s/,” the signatory has concurred in  
3 the filing of this document.

4 Dated: February 15, 2019

By: /s/ Matthew A. Russell  
Matthew A. Russell

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8 **~~PROPOSED~~ ORDER**

9 PURSUANT TO THE STIPULATION, IT IS SO ORDERED: the above Stipulation and  
10 Proposed Order to Modify the Case Schedule is approved and all parties shall comply with its  
11 provisions.

12  
13 Dated: 2/19/2019



14 U.S. District Court for the  
15 Northern District of California  
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